STEUBEN COUNTY
ENVIRONMENTAL
MANAGEMENT COUNCIL

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November 4, 2010

Water Docket
Environmental Protection Agency
Mail code: 2822T
1200 Pennsylvania Ave., NW
Washington, DC 20460

RE: Draft Chesapeake Bay TMDL
Docket ID: EPA-R03-OW-2010-0736

To Whom It May Concern:

The Steuben County Environmental Management Council is proud of the water quality in our county and supports reasonable approaches to achieve further improvements. We also applaud the Environmental Protection Agency (EPA) efforts to improve water quality in the Chesapeake Bay. However, we are concerned that the load reductions assigned to New York in the draft Chesapeake Bay Total Maximum Daily Load (TMDL) cannot be achieved.

Proposed Allocations are Unfair

Basic fairness principles should be exercised by the EPA in establishing TMDL allocations for the states. We request that the following points be considered when establishing New York's share of the allocated load:

Contribution to Bay impairment: New York's water quality far surpasses that of any other jurisdiction within the Bay watershed. In fact, if each Bay state had New York's current water quality, the Chesapeake Bay would not be impaired. New York State's impact on the Bay's water quality is thus significantly less than that of other states closer to the Bay.

Cost-effectiveness of remediation: Because New York's water quality is relatively high and delivery factors (percentage of pollutants that reach the Bay) are low, it will cost substantially more for New York State to remove a pound of delivered pollutant from the Bay than it would for other watershed states.

Economic benefits from the Chesapeake Bay: New York State is remote from the Chesapeake Bay and would derive no direct benefit from improvements to its water quality. It is unfair to ask taxpayers and businesses in headwater states to pay for improved Bay water quality when the resulting economic benefits would be limited to states adjacent to the Bay.

Population impacts: Many of the Chesapeake Bay's water quality problems can be attributed to the rapidly rising population within the watershed, which increased by 3.5 million people over the last two decades and overwhelmed efforts to reduce pollution loads from other sources. The New York portion of the watershed has had a stable population over this period and declining pollution loads. New York should not be expected to compensate for the water quality impairments that result from population growth and land use changes in other parts of the watershed.

Inaccuracy of the Bay Watershed Model: There is a general lack of confidence regarding the Chesapeake Bay Watershed Computer Model in regards to its ability to accurately represent current nutrient and sediment loads from the New York portion of the watershed and predict reductions in those loads due to proposed improvements and management programs. Large deviations in estimated delivered nutrient loads have occurred from one version of this model to the next. This casts doubt on the ability of this model to be an effective and reasonable planning tool, as well as the legal basis for establishing TMDLs.

Atmospheric nitrogen sources: It is estimated that approximately 20-25 percent of the total nitrogen delivered to the Bay from New York originates from airborne pollution from outside of the state. Since New York has no control over these sources, they should not be included in New York's load allocation. The Chesapeake Bay Airshed Model should be used to establish nitrogen allocations for the upwind states that contribute these airborne pollutants.

Sources within the Chesapeake Bay: The draft TMDL allocates loads to sources identified in the Chesapeake Bay Watershed Model without sufficient attention to factors within the Chesapeake Bay itself that contribute to its impairment. Additional consideration should be given to the contribution of boats, coastal erosion, degraded biological communities (resulting in reduced biological filtration), and other factors.

Unachievable: The proposed allocations appear to be based on the expectation that New York can provide water that is clean enough to dilute pollutants from other parts of the watershed. In addition to being unfair, the draft allocations are so stringent that they are probably unachievable. This means that they would place great hardship on New York, but would still not achieve the desired water quality benefits in the Chesapeake Bay. We thus request that the proposed allocations be replaced with reasonable allocations that are both equitable and achievable.

Proposed Federal Backstop Actions are Unreasonable

In light of the unreasonable allocations assigned to New York, it is not surprising that EPA found shortfalls in the load reductions that are proposed in the state's draft Watershed Implementation Plan (WIP). EPA's proposed solution is to exert severe federal regulatory control over regulated sources in New York. These "backstop" measures would impose severe economic hardships on wastewater treatment plants, animal feeding operations, and municipal separate storm sewer systems (MS4s). However, it is unlikely that these punitive measures could achieve the desired pollution reduction results.

The proposed federal backstop actions do not constitute a credible strategy for achieving water quality standards in the Bay and should thus be eliminated. EPA should instead engage in constructive dialog with the states to develop realistic, economically viable water quality improvement strategies.

Who Pays?

New York State is already a very good neighbor to the Chesapeake Bay, delivering clean water with lower pollutant loads than other parts of the watershed. This is the result of low intensity land use (76%

forest), low population density, stable population, progressive natural resource management programs, regulatory programs that exceed federal requirements, and a strong environmental ethic among watershed residents. The depressed economy of this region cannot support costly additional measures to further reduce nutrient and sediment loads, particularly those in the proposed federal backstop. The proposed regulations would burden our farm communities with costly mandates that would weaken rural economies and disrupt local food systems. New York communities would be required to spend an estimated $250 million to retrofit and rebuild Waste Water Treatment Plants. Extensive stormwater retrofits would also be required, even though it is generally recognized that this approach is among the most expensive ways to reduce nutrient and sediment loads. The draft TMDL mandates these costly measures even though they are unlikely to achieve the unreasonably low load allocation that EPA has assigned to New York. Given the reality of limited financial resources, the TMDL should be revised to target the most cost-effective approaches and locations for achieving water quality objectives.

If Chesapeake Bay restoration requires additional load reductions from the already clean waters originating in New York, funding should be provided to enable implementation of those measures. Due to the high existing water quality, the Susquehanna and Chemung Basins are not top funding priorities for use of New York's limited resources. If restoration of the Bay necessitates additional load reductions from New York, those improvements should be fully financed by federal sources and/or the states that stand to benefit financially from Bay restoration. This approach has worked in southeastern New York, where New York City pays for and benefits from water quality improvements in the watersheds that supply the City's drinking water.

Schedule for TMDL Release is Unreasonable

The proposed timeline for establishing the final TMDL (by December 31, 2010) does not allow sufficient time for EPA to develop a realistic and achievable TMDL. We request that implementation of the TMDL be delayed until EPA can achieve the following: (1) Revise the allocations so that they are fair and technically achievable; including establishment of allocations for atmospheric sources of nitrogen and sources within the Bay itself. (2) Work constructively with the states to evaluate alternatives and prepare realistic and cost-effective Watershed Implementation Plans (without federal backstop requirements). (3) Identify funding from federal sources or from entities that stand to benefit from Chesapeake Bay restoration to enable implementation of the required practices. If the TMDL is established before these conditions are met, it is unlikely to achieve the goal of restoring water quality in the Chesapeake Bay. A poorly crafted and un-successful TMDL would not benefit the Bay and could compromise EPA's ability to implement Clean Water Act provisions in other areas.

Thank you considering these suggestions regarding the Chesapeake Bay TMDL and working to make the final TMDL both fair and achievable.

Sincerely,

Janet Thigpen

Janet Thigpen
Chair

Cc: Senator Kirsten E. Gillibrand
Senator Charles E. Schumer
Congressman Tom Reed
Congressman Michael A. Arcuri
Congressman Maurice D. Hinchey
Congressman Christopher John Lee
Congressman Daniel B. Maffei
Congressman Scott Murphy
Congressman William L. Owens
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Peter Iwanowicz, NYSDEC, Acting Commissioner
Ron Entringer, NYSDEC, Water Quality Management Section Chief
Peter Freehafer, NYSDEC, Chesapeake Bay Coordinator
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James Edwards, Acting Director, EPA Chesapeake Bay Program Office